



OFFICE OF THE CHAIRMAN

October 5, 2012

Honorable Charles Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for your letter requesting information regarding Section 19 of the Federal Deposit Insurance Act (Section 19).

First enacted in 1950, Section 19(a)(1) of the Federal Deposit Insurance Act states, in part: “Except with the prior written consent of the Corporation [FDIC]-- (A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, *may not---(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution*” [Emphasis added]. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19.

In order to implement the statutory language and provide clarity to institutions and persons subject to the law, the FDIC Board published a Statement of Policy in 1976, *Consent to Service of Persons Convicted of Criminal Offenses Involving Dishonesty or Breach of Trust as Directors, Officer or Employees of Insured Banks*.¹ Additional guidance on the law was provided with a second Statement of Policy published in 1980, *Applications Under Section 19 of the Federal Deposit Insurance Act*. On July 24, 1997, a proposed Statement of Policy was published in the Federal Register for public comment.² The proposal addressed congressional amendments to Section 19 that expanded its applicability to a wider range of covered persons and crimes, (e.g., institution-affiliated parties, pre-trial diversions or similar programs, money laundering).³ On December 1, 1998, after consideration of the comments received, the FDIC’s Board rescinded the 1976 and 1980 Statements of Policy and replaced them with the 1998 *Statement of Policy for Section 19 of the FDI Act* (Statement).⁴

¹ 41 FR 42699 (September 22, 1976).

² 62 FR 39840 (July 24, 1997).

³ See, e.g., the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989); the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (1990); and the Housing and Community Development Act of 1992, Pub. L. No. 102-550, tit. XV, 106 Stat. 4055 (1992)(Annunzio-Wylie Anti-Money Laundering Act).

⁴ 63 FR 66177 (December 1, 1998).

The Statement defined the types of offenses that involve dishonesty or breach of trust. It also imposed a duty upon insured institutions to make a reasonable inquiry regarding a job applicant's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry (such as a pretrial diversion or similar program) for a covered offense. The Statement provided blanket waiver approval for certain *de minimis* offenses. These were defined as covered offenses where: 1) there is only one conviction for a covered offense; 2) the offense was punishable by imprisonment for a term of less than one year and/or a fine of less than \$1,000 and the individual did not serve time in jail; 3) the conviction was entered at least five years prior to the date an application would otherwise be required; and 4) the offense did not involve an insured depository institution or credit union.

Other significant provisions addressed the exclusion from Section 19's coverage of a conviction that has been completely expunged, pretrial diversion, and similar programs entered before November 29, 1990, and youthful offender adjudgments. Finally, the Statement clarified that the scope of Section 19's coverage applies not only to employees of an insured institution, but also to other persons who are in a position to influence or control the management or affairs of an insured institution.

In adopting the Statement, the FDIC acknowledged that many institutions were not willing to file applications on behalf of a convicted individual under any circumstance. For those with relatively minor convictions, this was considered to be an overly harsh result. For this reason, the FDIC attempted to mitigate this outcome by adopting the *de minimis* standards discussed above. In doing so the FDIC was mindful that others may not fall within the scope of the *de minimis* standards. Therefore, while the Statement retained the institution filing requirement, it also provided that an individual may seek a waiver of this requirement where substantial good cause for granting a waiver is shown.⁵

In 2011, the FDIC further amended the Statement to clarify its intent with respect to the *de minimis* standards by, among other things, clarifying that it applied to offenses punishable by imprisonment for a term of one year or less and/or a fine of \$1,000 or less.⁶ In back testing the standards in the Statement for the previous three years, based upon the volume and nature of the applications we received in years 2008 to 2010, it was determined that these clarifications to the *de minimis* standards may have reduced the number of Section 19 applications that would have otherwise been required by as much as 50 percent.

Despite the FDIC's actions to broaden the automatic waiver approval to more individuals, a combination of other factors outside the Agency's control has had the effect of subjecting more individuals to the requirements of Section 19, which has resulted in a recent and temporary increase in Section 19 waiver applications from individuals. Some of these factors include the increasing number of mergers between

⁵ Federal Register: December 1, 1998 (Volume 63, Number 230), Pages 66177-66185.

⁶ FDIC Statement of Policy for Section 19 of the FDI Act, amended May 10, 2011.

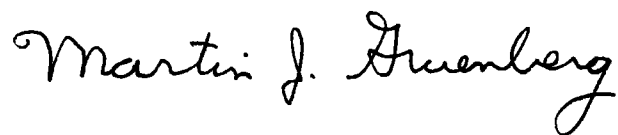
banks and non-banks, such as mortgage companies or securities firms, which subjects more individuals to Section 19 coverage. Additionally, the passage of the U.S. Secure and Fair Enforcement for Mortgage Licensing Act of 2008, commonly known as the SAFE Act required all residential mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry. As part of the registration process, mortgage originators are required to submit fingerprint cards on their employees to the FBI. In some cases, these fingerprint examinations have uncovered old criminal offenses covered by Section 19, necessitating after-the-fact waiver applications to the FDIC.

When processing a Section 19 application, the FDIC considers the applicant's lifetime conviction record(s) and subsequent rehabilitation; input from other federal financial institution regulators; and the results of background checks from federal law enforcement agencies. The FDIC cannot finalize its consideration until all necessary information and background checks have been received and reviewed. Background checks from certain law enforcement agencies can take several months and, until recently, the waiting time for these background checks was responsible for most of the processing time for a typical Section 19 application. After careful consideration, the FDIC revised its processing guidelines in June 2012 to streamline background check requirements. The FDIC will continue to require FBI background checks; however, those from other federal law enforcement agencies will be required only on a limited basis (e.g., due to the nature of the covered offense). As a result of this change, the processing time for Section 19 applications has shortened considerably since June of this year.

Finally, regarding your constituent, the FDIC approved Mr. Richard Eggers' application for a waiver of the institution filing requirement and consented to his employment by any insured institution on September 26, 2012.

Enclosed are responses to your specific questions prepared by the FDIC's Legal Division and the Division of Risk Management Supervision. If you have other questions, please feel free to contact me at (202) 898-3888 or Eric Spitler, Director, Office of Legislative Affairs, at (202) 898-7140.

Sincerely,

A handwritten signature in black ink that reads "Martin J. Gruenberg". The signature is written in a cursive, flowing style.

Martin J. Gruenberg
Acting Chairman